

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

	)	
THE MORNINGSIDE GROUP LIMITED,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 04-11396-RGS
	)	
MORNINGSIDE CAPITAL CORPORATION,	)	
	)	
Defendant.	)	
	)	

## **PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT JUDGMENT**

Plaintiff The Morningside Group Limited (“Morningside Group”) moves for entry of default against Defendant Morningside Capital Corporation (“Morningside Capital”) pursuant to Federal Rule of Civil Procedure 55(a) on the grounds that Morningside Capital has failed to plead or otherwise defend against this action as provided by the Federal Rules of Civil Procedure. In support of this Motion, Morningside Group states as follows:

1. On June 18, 2004, Morningside Group commenced this action by filing a Complaint against Morningside Capital alleging trademark infringement, unfair competition, and dilution in violation of the Lanham Act. A courtesy copy of the Complaint was sent to Morningside Capital that same day.

2. On July 5, 2004, Morningside Capital sent a letter to Morningside Group confirming its receipt of the Complaint, asserting various reasons that it believed its conduct should not raise concerns, and indicating that it would refer the matter “to [its] US counsel for defence.” (*See* Exhibit A to the Affidavit of Vinita Ferrera (“Ferrera Aff.”), attached hereto as Exhibit 1.)

3. Morningside Group effected service upon Morningside Capital on July 14, 2004 and subsequently filed proof of service with this Court. (*See* Ferrera Aff., Exhibit B.)

4. Morningside Group has received no further communication from Morningside Capital since service of the Complaint.

5. Pursuant to Fed. R. Civ. P. 12(a)(1), Morningside Capital was required to answer or otherwise respond to the Complaint in this action within 20 days, or by no later than August 3, 2004.

6. To this date, Morningside Capital has not served an answer to the Complaint or otherwise defended this action.

7. Morningside Capital is not an infant or incompetent person.

8. In further support of this Motion for Entry of Default Judgment, Morningside Group submits the Affidavit of Vinita Ferrera, attached hereto as Exhibit 1.

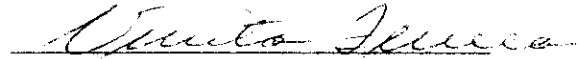
WHEREFORE, Morningside Group respectfully requests that the Court:

1. Enter a default judgment against Morningside Capital and in favor of Morningside Group on each of the claims in the Complaint pursuant to Fed. R. Civ. P. 55(a) & (b)(2);
2. Permanently enjoin Morningside Capital and its predecessors, successors, divisions, subsidiaries, or joint ventures thereof, together with any and all parent or affiliated companies or corporations, and all officers, directors, employees, agents, attorneys, representatives, those acting in privity or concern with them, or on their behalf, from further infringing the MORNINGSIDE mark, or from using any other mark, brand, or designation that is a colorable imitation of the MORNINGSIDE mark, or is likely to be confused with the MORNINGSIDE mark, and from engaging in further unfair competition and unfair or deceptive acts or practices; and
3. Grant to Morningside Group such other relief as may be just and warranted under the circumstances.

Respectfully submitted,

MORNINGSIDE GROUP LIMITED

By its attorneys,



Mark G. Matuschak (BBO #543873)

Vinita Ferrera (BBO # 631190)

Wilmer Cutler Pickering Hale and Dorr LLP

60 State Street


Boston, MA 02109

(617) 526-6000

Dated: September 3, 2004

**CERTIFICATE OF SERVICE**

I, Vinita Ferrera, hereby certify that the above document was served on the defendant, Morningside Capital Corporation, by overnight mail, this 3rd day of September, 2004.



Vinita Ferrera